



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/167149

PRELIMINARY RECITALS

Pursuant to a petition filed July 07, 2015, under Wis. Admin. Code § HA 3.03, to review a decision by the Outagamie County Department of Human Services in regard to Child Care, a hearing was held on August 04, 2015, at Appleton, Wisconsin.

The issue for determination is whether the agency correctly assessed a child care overpayment in the amount of \$14,855.93 for the period from May 1, 2010 through August 31, 2013.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue, Room G200
Madison, Wisconsin 53703

By: Debbi Debruin

Outagamie County Department of Human Services
401 S. Elm Street
Appleton, WI 54911-5985

ADMINISTRATIVE LAW JUDGE:

Corinne Balter

Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Outagamie County.
2. Between May 1, 2010 and August 31, 2013 the petitioner received child care assistance for in the amount of \$14,855.93. This assistance was paid directly to the petitioner's child care provider. The child care provider in this case was the petitioner's mother who ran a licensed daycare.

3. On June 4, 2015 the agency sent the petitioner the following care overpayment notices:
 - a. Claim number [REDACTED] for the period from May 1, 2010 through December 31, 2010 in the amount of \$4,267.19. The reason for the overpayment was client error.
 - b. Claim number [REDACTED] for the period from January 1, 2011 through December 31, 2011 in the amount of \$5,518.70. The reason for the overpayment was client error.
 - c. Claim number [REDACTED] for the period from January 1, 2012 through December 31, 2012 in the amount of \$2,770.51. The reason for the overpayment was client error.
 - d. Claim Number [REDACTED] for the period from January 1, 2013 through August 31, 2013 in the amount of \$2,299.53. The reason for the overpayment was client error.
4. The reason for the overpayment was that the father was in the home. Upon being released from prison the father reported to his probation agent that he was living in the petitioner's home. The probation agent did home visits during the overpayment period confirming that the father was living in that home.
5. On July 10, 2015 the Division of Hearings and Appeals received the petitioner's request for fair hearing.
6. The petitioner admits that she allowed the father of one of the children to report to probation and parole that he was living at her address. She further agreed that she allowed the father to use her home for the purposes of home visits. The petitioner, her daughter, and the petitioner's mother testified that despite these facts, the father was living in [REDACTED], WI. They did not present any corroborating evidence of the [REDACTED] address during this overpayment period.
7. The father was living in the petitioner's home during the overpayment period.

DISCUSSION

Wis. Stat., §49.195(3), provides as follows:

A county, tribal governing body, Wisconsin works agency or the department shall determine whether an overpayment has been made under s. 49.19, 49.148, 49.155 or 49.157 and, if so, the amount of the overpayment.... Notwithstanding s. 49.96, the department shall promptly recover all overpayments made under s. 49.19, 49.148, 49.155 or 49.157 that have not already been received under s. 49.161 or 49.19(17) and shall promulgate rules establishing policies and procedures to administer this subsection.

Child care subsidies are authorized in Wis. Stat., §49.155, and thus they are within the parameters of §49.195(3). Recovery of child care overpayments also is mandated in the Wis. Adm. Code, §DWD 12.23. An overpayment is any payment received in an amount greater than the amount that the assistance group was eligible to receive, regardless of the reason for the overpayment. Wis. Adm. Code, §DWD 12.23(1)(g). Recovery must occur even if the error was made by the agency.

A parent is eligible for child care services if she needs the care to attend W-2 approved school, to work, or to participate in W-2 activities. Wis. Stat., §49.155(1m)(a); W-2 Manual, §15.2.0. The agency shall recover child care payments if the authorized payments would have been less because the parent was absent from an approved activity while the child was in care. Child Day Care Manual, Chapter 2, §2.3.1.

In this case the issue is whether the father was living in the home during the overpayment. If he was, there is an overpayment. If he was not, then there is no overpayment. The agency presented information that the father informed his probation agent that he was living at that address. The probation agent did

several home visits during the overpayment period confirming that the father was living at that address. Having seen several of these types of cases it is my experience that when probation agents do home visits it is more than showing up, knocking, and saying hi and bye. Rather the Probation Agent confirms that what the convicted criminal is saying is true. The agent confirms that the person is actually living at the address through additional corroboration. They also look to see that the person is abiding by the terms of supervision, for example, that there is no alcohol, drugs, and weapons in the home. These home visits are sometimes arranged, but other times unannounced.

The petitioner does not dispute that the father of one of her children reported to probation and parole that he was living at her address. She further agreed that she allowed him to use her home for the purposes of home visits. She disputes that he was actually living there, and testified that he was living in [REDACTED]. She said that he said he did not want to report his [REDACTED] address because the probation agent he had was "cool." I do not find this testimony credible. I find it to be self-serving and unreliable. I am stuck with whether I believe her testimony now that she was complicit and aided the father in his lie to his probation agent or I believe the original statements made and observed by this probation agent. The petitioner molds her story based upon what is most advantageous for her at a given moment. All the witnesses that the petitioner presented were family members. Her mother who testified was the provider who was paid nearly \$15,000 to watch her grandchildren. This would have been allowed, but for the fact that the father was in the home, and also available to care for the children.

The petitioner presents no corroborating evidence that the father was living in [REDACTED] during the overpayment period. The father did not testify. She presented no mail or other statements showing the father's address in [REDACTED]. There was no utility bill or lease. The agency on the other hand had the corroboration of the probation agent, which the petitioner did not dispute.

Common sense and life experience demonstrate the petitioner's testimony is not credible. On one hand she states that this man is absent and untrustworthy, but on the other hand she testifies that she allows him to use her address. Presumably he would have received mail at her address. She would have had to get him his mail. This would have been extremely inconvenient, and not something that someone would do for an absent, untrustworthy father of a child. Most likely is that he was living with the petitioner during the overpayment period. At some point after the overpayment period he got a new girlfriend and moved out. After this occurs the petitioner receives the notice of overpayment. Now the petitioner and her family conveniently testify with no corroboration, that the father living at this newer address in [REDACTED] during the overpayment. This potentially gets the petitioner out of a nearly \$15,000 overpayment. In short, the petitioner's testimony is not corroborated by other credible evidence, self-serving, highly convenient and not credible.

CONCLUSIONS OF LAW

The agency correctly assessed a child care overpayment in the amount of \$14,855.93 for the period from May 1, 2010 through August 31, 2013.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

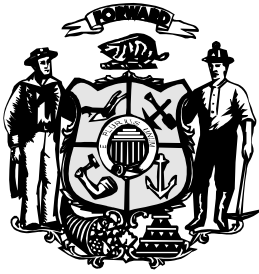
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 4th day of September, 2015

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on September 4, 2015.

Outagamie County Department of Human Services
Public Assistance Collection Unit
Child Care Fraud